



**Department of Energy**  
Richland Operations Office  
P.O. Box 550  
Richland, Washington 99352

04-PRO-0292

**MAR 05 2004**

Mr. T. E. Logan, President  
Bechtel Hanford, Inc.  
3070 George Washington Way  
Richland, Washington 99352

Dear Mr. Logan:

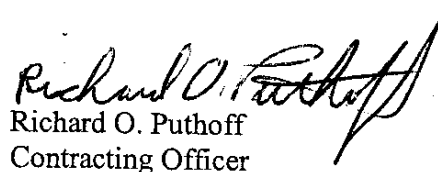
CONTRACT NO. DE-AC06-93RL12367 - CONTRACT MODIFICATION M211

Enclosed for your review are four copies of contract modification M211. This modification revises Sections H and I of the contract to delete Special Contract Requirements H-15, Special Provision on Financial Accountability, and H-35, Insurance, and add Special Contract Requirement H-38, Conditional Payment of Fee (CPOF) Site Specific Performance Criteria/Requirements and Contract Clauses I-53, DEAR 970.5215-3, Conditional Payment of Fee, Profit, or Incentives - Facility Management Contracts and Alternate I and Alternate II, and I-54, DEAR 952.231-71, Insurance - Litigation and Claims.

Three signed copies of the modification should be returned to this office. When the modification has been signed on behalf of the Government, one fully executed copy of the modification will be provided to you for your files.

If you have any questions, please contact me at (509) 376-8853.

Sincerely,

  
Richard O. Puthoff  
Contracting Officer

PRO:GHB

Enclosures

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>		1. CONTRACT ID CODE	PAGE 1	OF 1	PAGES 101
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2. AMENDMENT/MODIFICATION NO. M211	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO. None	5. PROJECT NO. (if applicable)
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6. ISSUED BY U.S. DEPARTMENT OF ENERGY RICHLAND OPERATIONS OFFICE P.O. BOX 550, MSIN A7-80 RICHLAND, WA 99352	CODE	7. ADMINISTERED BY (if other than Item 6)	CODE
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Bechtel Hanford, Inc. 3070 George Washington Way Richland, WA 99352	(X)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
	X	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC06-93RL12367
CODE	FACILITY CODE	10B. DATED (SEE ITEM 13) 01/15/93

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above-numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment, (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority). THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Mutual agreement of the contracting parties.
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor \_\_\_ is not, X is required to sign this document and return 3 copies to the issuing office.

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Replacement pages H-i through H-iii, H-8 through H-21, I-i through I-iv, and I-1 through I-79 are attached.

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15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA (Signature of Contracting Officer)	16C. DATE SIGNED

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**PART I - SECTION H**  
**SPECIAL CONTRACT REQUIREMENTS**  
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**H-13 ADVANCE UNDERSTANDING ON PERSONNEL POLICIES AND PROCEDURES**

The Department of Energy (DOE) intends to reach advance understandings with the successful offeror on certain personnel costs and related expenses. These costs are those associated with personnel policies and procedures which the offeror intends to apply to work under the ERC contract. Advance review by DOE and written approval by the Contracting Officer of such personnel policies and procedures will be required. Any exceptions noted in the Contracting Officer's written approval will govern the Contractor's application of the personnel policies and procedures under the ERC contract. Any deviation from the personnel policies and procedures so approved must have DOE approval before costs occasioned thereby will be considered allowable (either direct or indirect) under the subject contract.

**H-14 PREEXISTING CONDITIONS**

- a. The Government shall indemnify, protect, and hold the Contractor harmless from and against any and all civil liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability), actions, suits, costs, expenses, and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever which may be incurred by, imposed on, or asserted against the Contractor in any way relating to or arising out of any act or failure to act on the part of any person, and relating to any part of the facility at the sites managed under this contract or any areas adjacent thereto which act or failure to act occurred before the Contractor assumed responsibility for sites managed under this contract. New conditions created or caused in whole or in part by the Contractor after assuming management responsibility for the sites, facilities, and associated structures are not considered "Pre-existing conditions". To the extent the acts or omissions of the Contractor cause any fine or add to the amount of any fine or penalty that resulted from pre-existing condition(s), the Contractor will be responsible in accordance with the terms and conditions of this contract. The provisions of this clause are subject to the availability of funds appropriated by Congress. The Government shall use its best efforts to obtain such funds should such funds not be otherwise available.

**H-15 RESERVED**

**H-16 AUTHORITY TO PROCEED INTO REMEDIAL ACTION**

The Contractor is not authorized to proceed with the remedial actions selected in Records

of Decision without the written approval of the Contracting Officer or the Contracting Officer's Representative (COR).

#### **H-17 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT**

The Contractor agrees to conduct an inventory satisfactory to DOE of Government owned property, including capital equipment and sensitive property, during the first six months following assumption of full responsibility under this contract. The results of this inventory shall be submitted or made available to the Contracting Officer. The Contractor agrees to update its inventory on an annual basis.

The Contractor shall maintain and administer a property management system, subject to the approval of the Contracting Officer, of accounting for and control, utilization, maintenance, repair, protection, and preservation of Government property in its possession under the contract. The Contractor's property management system shall be maintained and administered in accordance with sound business practice, and in accordance with Department of Energy Property Management Regulations and such directives or instructions which the Contracting Officer may from time to time prescribe.

The Contractor shall administer a real property administration system in accordance with Federal Acquisition Regulations Part 45.5 for the real property and fixtures listed in Section J, Attachment 2, Appendix 5 to this contract and the treatment, storage and disposal units listed in Section J, Attachment 2 Appendix 7 (as those appendices may be amended by direction of the Contracting Officer).

#### **H-18 INTERNAL AUDIT**

The Contractor agrees to perform an internal audit function to conduct reviews and examinations, satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed allowable under this contract. The Contractor shall submit, for the approval of the Contracting Officer, an annual audit plan for internal audits of the Contractor and for audits of on-site cost-type subcontractors. The official audit report(s), including the working papers (as required), shall be submitted or made available to the Contracting Officer or his/her designee. This clause does not supersede the Government's right to perform self-initiated reviews, evaluations, or audits.

#### **H-19 INVOICED AMOUNTS**

In addition to the information required by other sections of this contract, the Contractor shall provide incurred cost data coded in a DOE defined format via computer or some other form of magnetic media such as a computer tape or floppy disk. This incurred cost data must be fully edited against DOE codes such as budget and reporting (B&R) codes,

etc. The Contractor shall deliver the fully edited incurred cost data to DOE on the same day that the invoices is delivered unless directed otherwise by DOE.

## **H-20 KEY PERSONNEL**

The personnel specified below are considered essential to the work being performed under this contract. Prior to diverting to other positions or substituting any of the specified individuals, the Contractor shall notify the Contracting Officer at least thirty (30) days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion or substitution shall be made by the Contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion or substitution and such ratification shall constitute the consent of the Contracting Officer required by this clause. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

<u>NAME</u>	<u>TITLE</u>
T. E. Logan*	President
Vacant*	Vice President, Operations
Vacant	Manager, Quality, Safety and Health
M. B. Fox	Manager, Planning and Controls

The base annual salary for all Key Personnel are reimbursable only to the extent each such salary has been approved on DOE Form 3220.5, Application for Contractor Compensation Approval, by DOE. The contractor will provide supporting information with DOE Form 3220.5 on all compensation actions well in advance of the proposed effective date.

For the asterisked (\*) employees BHI will invoice DOE the salary cost only after approval is received. For all other key employees BHI is allowed to invoice DOE for any salary costs, which are in accordance with the submitted salary plan or Form DOE 3220.5. In case of disapproval of such billed salary costs (either direct or indirect) BHI within 45 days will issue a retroactive credit to the proper account.

## **H-21 DEPARTMENT OF LABOR WAGE DETERMINATION**

In the performance of this contract, the Contractor and/or subcontractors shall comply with the requirements of U.S. Department of Labor Wage Determination Number (96-0330), Revision 1, dated (11/10/1997), if the contract or subcontracts are covered by the Service Contract Act. Prior to the beginning of each contract year, a revised wage determination shall be requested from the Department of Labor and incorporated into this contract by letter from the Contracting Officer. The Contractor and/or subcontractors shall comply with the revised wage determination for Service Contract Act covered

employees.

## **H-22 BUSINESS UNIT**

The work performed by Bechtel Hanford, Inc. under this contract shall be conducted as a separate business unit (division, segment, joint venture, etc.), separate from the parent unit. Bechtel Hanford, Inc. and its affiliated companies may perform other commercial activities in furtherance of DOE's Hanford Strategic Plan mission to "...partner in the economic diversification of the region."

## **H-23 SUPPORT FROM BECHTEL AFFILIATED SOURCES**

Due to the project nature of the Contractor's scope of work, it is recognized that the staffing requirements of the Contractor will vary over the course of each year. The technical and staff support capabilities of the Contractor and its affiliates for work at Hanford were proposed and recognized in the competitive selection process. Therefore, the Contractor may obtain direct support from affiliates to meet technical and staffing requirements on an as needed basis as approved by the Contracting Officer. Approval will be obtained through DOE's approval of the Contractor's fiscal year work plan, to the maximum practical extent, which will identify the anticipated level of "Offsite Support". Further, DOE approval shall be obtained for any material increase from the work plan. The process and procedure for justifying and controlling transfers from affiliates will be approved by the Contracting Officer.

Services from a Bechtel-affiliated source will be at cost without additional fee or profit. Allowable cost will include direct cost and all allocable indirect costs in accordance with applicable Federal Acquisition Regulation Cost Principles (excluding Facilities Capital Cost of Money). Work performed at Hanford will be billed using a Government approved offsite (project) rate. In the absence of a Government approved offsite (project) rate, temporary assignments of personnel from Bechtel-affiliated sources greater than 6 months, shall have indirect costs based upon an offsite rate that excludes home office facilities costs and other costs for services and equipment provided at the Hanford site.

## **H-24 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION**

The clause of this contract entitled FAR 52.237-2, Protection of Government Buildings, Equipment, and Vegetation, shall not apply to construction or demolition activities performed by the Contractor pursuant to the scope of work outlined in the Contract.

**H-25 SPECIAL VOLUNTARY RETIREMENT PROGRAM (SVRP) PAYMENT AUTHORIZATION**

The Contractor, Bechtel Hanford, Inc. (BHI), is authorized to reimburse, as an allowable cost, monthly payments by its subcontractor, IT Hanford, Inc. (ITH), associated with the 1996 Special Voluntary Retirement Program (SVRP) for Mr. Theodore A. Curran and Mr. Kenneth R. Porter. The monthly payments will be equal to the enhancement portion of the SVRP. As of February 1, 1997, these amounts are \$523.66 for Mr. Curran and \$752.98 for Mr. Porter. The exact amounts are to be determined by the Plan Administrator based on the actual retirement date and the joint and survivor annuity option as selected by the individuals. Each monthly payment will continue until: (1) the month immediately preceding the month each individual receives his first payment of an enhanced benefit from the Hanford Pension Plan; or (2) the month of his death or his spouse's death, whichever is later. The Contractor and/or its subcontractor, ITH, shall make such payments, as allowable costs, for the terms of their respective contract/subcontract only. Any costs related to these payments, such as administration, employer taxes, etc., are also considered allowable. The Department of Energy (DOE) will incorporate provisions in successor contracts for continuation of said payments as allowable costs. In the event there is no successor contractor, DOE will make such payments directly to the above individuals based on the conditions herein.

Payment of the above amounts may be found to be included as part of the Hanford Pension Plan, should the Internal Revenue Service (IRS) rule that such payments are qualified under the Hanford Pension Plan. A ruling by the IRS qualifying such payment under the Hanford Pension Plan will negate the monthly payments by BHI and/or its subcontractor, ITH, successor contractors or the DOE.

**H-26 PROVISIONAL PAYMENT OF FEES**

- a. Definition: For purposes of this clause, the word "fee" shall mean performance fee.
- b. Provisional payment of fee will be paid monthly at a value not to exceed 6.67% of the in effect annual fee pool value. Payment is dependent upon adequate Contractor performance such that DOE has determined that the Contractor's performance is at least at the 80% level as defined in the Performance Plan. Should performance be considered below the 80% level, DOE may elect to authorize a lesser payment for the month. During subsequent months, should Contractor performance warrant, DOE may increase the monthly provisional fee payment in excess of 6.67% of the annual fee pool as long as the aggregate provisional fee payment for the period (excluding fee associated with completed PBCI's) does not exceed 80% of the annual fee pool. The Contractor shall submit a monthly provisional fee invoice with the second cost invoice of the following month, or on the day of the Environmental Restoration Contract (ERC) Project Review if the Project Review date falls after the Contractor has submitted the

second cost invoice. Both parties agree to work together to ensure that the provisional fee invoice is submitted and paid by the end of each month.

- c. The final fee determination for the performance period will be made by the Contracting Officer or the Fee Determining Official (FDO), as appropriate, in accordance with the fee clauses of this contract. In the event that overpayment results from the payment of fee on a provisional basis, the Contractor shall reimburse such overpayment to the Government upon demand, payable with interest in accordance with the contract clause FAR 52.232-17, Interest. Interest shall begin on the overpayment 7 days after DOE notifies the Contractor that an overpayment has occurred.

#### **H-27 SPECIAL PROMPT PAYMENT PROVISIONS**

As allowed in FAR 32.906(a), the Contracting Officer will make payment on the seventh (7th) calendar day after receipt of a proper contract invoice request and an electronic file fully edited against DOE codes such as budget and reporting (B&R) codes, etc. Should the 7th day fall on a weekend or Federal holiday, payment will be made on the following business day without incurring a late payment interest penalty.

The Contractor agrees to an exception on the interest penalty. Eight days during each year that DOE is late on a payment or payments, the interest penalty will not be incurred. The 8-day "grace period" may occur as 8 consecutive days (i.e.; one payment made 8 days late) or 8 individual days throughout the year (i.e.; 8 payments made, each one day late).

As provided in Contract Clause I-11, Allowable Cost and Payment (Deviation), any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements audited. Any payment to the Contractor may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs, or (2) adjusted for prior overpayment or underpayment.

#### **H-28 LOBBYING RESTRICTIONS (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)**

The Contractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**H-29 LOBBYING RESTRICTIONS (DEPARTMENT OF INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1999)**

The Contractor or awardee agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**H-30 SUPERSTRETCH INCENTIVES**

To challenge the Contractor to accomplish significant, mission critical, superstretch goals that are in the best interest of the Government, significantly accelerate outyear workscope identified in the DOE-approved baseline, and/or motivate the Contractor to extraordinary performance, the following incentive provision is established:

Performance incentives addressing superstretch goals should be developed prior to the beginning of the fiscal year, but may be developed and implemented during the fiscal year on a limited basis. The RL Manager will establish superstretch goals. The cost and fee for superstretch work will be paid from funds that become available due to positive differences (savings and efficiencies, not including work deferrals) between the budgeted cost and actual cost of the regular work scheduled to be performed during the current fiscal year. The fee for superstretch work will be outside the fee pool identified in Clause B-5. Superstretch work may include a fee that does not exceed 20 percent of the estimated cost of the superstretch work. When the Contractor has determined funds are available for superstretch work, the Contractor shall coordinate with the RL Manager or designee to identify specific superstretch work to be initiated. The superstretch workscope must be identified and authorized by a Baseline Change Proposal (BCP) that must be approved by the RL Manager prior to the Contractor beginning work. The specific superstretch work and associated fee must be incorporated into the current year's Performance Plan in order for the Contractor to be eligible to receive fee for the work.

The BCP will be processed through the BHI and DOE Change Control Boards. Upon approval of the BCP and the revised Performance Plan by the RL Manager, the accelerated work will be performed. When the work is completed, a package documenting completion of the work will be prepared and submitted to DOE for approval. Approval of the completion package by DOE will authorize payment to the Contractor of the fee earned.

To earn the superstretch fee associated with a superstretch incentive, the cost and fee associated with the superstretch work must be able to be paid from the actual savings realized during the fiscal year that the superstretch work was initiated. The

superstretch work may be completed in a subsequent fiscal year on a limited basis at RL discretion. In the event the superstretch work is not completed within the agreed upon cost and schedule due to factors within the Contractor's control, a revised fee rate for the work that does not exceed the fee rate for regular work for the year that the work was initiated (See Table B-4) will be unilaterally assigned by the Contracting Officer (the revised fee rate may be zero). In the event cost overruns or schedule delays are due to circumstances beyond the control of the Contractor, the Contracting Officer may unilaterally assign a revised fee rate that does not exceed the established superstretch fee rate and also is not less than the fee rate for regular work for the year that the work was initiated.

Fee payments from accomplishment of superstretch goals will be separate from and not subject to or impact the provisional payment of fee limitations described in Clause H-26.

**H-31 TRAVEL RESTRICTIONS (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2000)**

- a. For contractor travel expenses incurred on or after October 1, 1999, a ceiling limitation of \$330,000 shall apply to all reimbursements made for contractor travel expenses, funded by DOE under the FY 2000 Energy & Water Development Appropriations Act, under this contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the Contracting Officer. Travel costs generally include lodging, meals, incidental expenses, airfare, rental cars and other miscellaneous expenses. Costs associated with certain types of travel are excluded from the ceiling limitation under this clause. Examples of excluded travel types are listed below:
  1. Travel performed under work for others agreements if funded by other than Energy & Water Appropriations,
  2. Travel of subcontractors,
  3. Travel of non-DOE users to participate in experiments at DOE user facilities,
  4. Travel costs funded by other appropriations,
  5. Travel costs of travel management centers,
  6. Relocation costs,
  7. Costs of workshops/seminars (other than travel costs), such as, rental of meeting rooms, public address equipment, speakers' fees; and
  8. Registration costs of training classes.

- b. Notwithstanding any other provisions of the contract, the Contractor further agrees that none of the funds obligated under the contract may be used to reimburse employee travel costs incurred on or after October 1, 1999 and before October 1, 2000 which exceed the rate and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code. To the extent that this contract provides elsewhere for the reimbursement of employee travel costs which exceed the rates and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code, the preceding limitation on reimbursement of employee travel costs applies to costs incurred on or after December 1, 1999 and before October 1, 2000. Costs, which exceed these rates and amount, will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.
- c. Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
  - 1. Federal Travel Regulations (FTR) for travel within the 48 contiguous states;
  - 2. Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
  - 3. Standardized Regulations (SR) for travel allowances in foreign areas.
- d. Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to contractor travel.
- e. Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

## **H-32 WORKER'S COMPENSATION**

Pursuant to State of Washington Revised Code (RCW) Title 51, Section 51.04.130 *Industrial Insurance Coverage for Hanford Workers – Special Agreements*, the Department of Energy (DOE), Richland Operations Office (RL) is a group self-insurer for purposes of workers' compensation coverage. The coverage afforded by the workers' compensation statutes shall, for performance of work under this contract at the Hanford Site, including work of pre-selected subcontractors only, be subject to the following:

The Contractor shall be relieved of all obligation to pay premiums to the Department of Labor and Industries of the State of Washington (L & I) for such coverage, DOE having agreed, under the terms of a contract with L & I to bear the actual cost of such coverage.

The Contractor shall submit to DOE (or other party as designated by DOE), for transmittal to the L & I, such payroll records as are required by the said statutes.

The Contractor shall submit to DOE (or other party as designated by DOE), for transmittal to L & I, the accident reports provided for by RCW Title 51, Section 51.28.010.

The Contractor shall take such action, and only such action, as DOE requests in connection with any accident reports, including assistance in the investigation and disposition of any claim thereunder and, subject to the direction and control of DOE, the conduct of litigation in the Contractor's own name in connection therewith.

The Contractor shall be responsible for making all payments and submitting all reports required by RCW Title 51, Section 51.32.073.

## **H-33 PERMITS AND LICENSES**

- a. Except as notified in writing by the Contracting Officer, the Contractor shall obtain any necessary permits and licenses required by laws, codes, ordinances, and regulations of the United States, a state or territory, and a municipality or other political subdivision, and which are applicable to the performance of work under this contract. This includes, but is not necessarily limited to, identifying if such permits and licenses are required, compiling the information and data required for applications to obtain permits and licenses, filing any application required to obtain permits and licenses, and providing any additional information or data required.
- b. When notified by the Contracting Officer that the DOE will obtain certain permits or licenses, the Contractor shall provide all reasonable assistance requested,

including providing information or data, that is required for obtaining such permits or licenses.

- c. The Contractor shall comply with all laws, codes, ordinances, and regulations of the United States, a state or territory, and a municipality or other political subdivision, and that are applicable to the performance of work under this contract.

#### **H-34 ORDER OF PRECEDENCE**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Statement of Work; (b) the schedule; (c) contract clauses; and (d) other documents, exhibits, and attachments. In the event of an inconsistency between or among contract clauses directly dealing with cost allowability issues, specific provisions of this contract will take precedence over provisions generally making FAR Part 31 applicable to the contract.

#### **H-35 RESERVED**

#### **H-36 PROCUREMENT OF CONSTRUCTION (JUNE 1991)**

The Contractor shall not perform construction services with its own employees under this contract without the express prior approval of the Contracting Officer.

The Contractor shall procure by subcontract the construction, alteration, or repair of public buildings or public works required to be performed under this contract. The Contractor shall ensure that any subcontract for such construction, alteration, or repair includes the following clauses, and that the subcontractor complies with their provisions:

Contract Work Hours and Safety Standards Act

Overtime Compensation at FAR 52.222-4

Davis-Bacon Act at FAR 52.222-6

Withholding of funds at FAR 52.222-7

Payrolls and Basic Records at FAR 52.222-8

Apprentices and Trainees at FAR 52.222-9

Compliance with Copeland Act Requirements at FAR 52.222-10

Subcontracts (Labor Standards) at FAR 52.222-11.

Contract Termination – Debarment at FAR 52.222-12

Compliance with Davis-Bacon and Related Act Regulations at FAR 52.222-13

Disputes Concerning Labor Standards at FAR 52.222-14

Certification of Eligibility at FAR 52.222-15

Buy American Act at FAR 52.225-5

Upon a determination by the Contracting Officer or the duly authorized representative that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, the Contractor shall request a determination of the prevailing wage rates from the Contracting Officer in sufficient time to include the appropriate wage determination in the subcontract bid package.

### **H-37 PROCUREMENT OF ARCHITECT-ENGINEERING SERVICES**

Upon direction of the Contracting Officer, the Contractor shall procure Architect-Engineering (A-E) Services using FAR Part 36 and DEAR Part 936 as guides. The Brooks Act, Public Law 92-582, establishes the policy and procedures necessary to assure the selection of A-E Contractors by the Federal Government is based solely upon the qualifications of competing A-E firms. The Act does not directly govern the award of A-E subcontracts. However, the Contractor shall assure that its purchasing system and methods reflect the essence of the Federal policy by providing for selection of A-E subcontractors based primarily upon the proposer's qualifications, however, this does not preclude the consideration of other factors, including cost or price, in the selection of A-E subcontractors.

Combinations of subcontractors for architect-engineer and construction services, which may result in self-inspection of construction work, shall not be awarded unless specifically authorized by the Contracting Officer.

### **H-38 CONDITIONAL PAYMENT OF FEE (CPOF) SITE SPECIFIC PERFORMANCE CRITERIA/REQUIREMENTS**

This Special Contract Requirement supplements Contract Clause I-53, DEAR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives-Facility Management Contracts (JAN 2004) and Alternate I (JAN 2004) and Alternate II (JAN 2004), by establishing site specific Environment, Safety and Health (ES&H)

performance criteria/requirements. Performance failures relating to the performance criteria set forth in this Special Contract Requirement will be processed in accordance with the provisions of Contract Clause I-53. The site specific performance criteria/requirements contained herein will be reviewed periodically and may be modified by mutual agreement.

The following additional subparagraphs supplement paragraph (c) (3) (Environment Safety and Health, Third Degree performance failures) of Contract Clause I-53:

- (v) Failure to report accurate data necessary to demonstrate regulatory compliance to enforceable regulations.
- (vi) OSHA Total Recordable Case Rate - Two consecutive quarters that the quarterly average exceeds 1.9 cases/200,000 hours.
- (vii) OSHA Lost Work Day (Days Away from Work, or Restricted Work Days, or both) Case Rate - Two consecutive quarters that the quarterly average exceeds 0.8 cases/200,000 hours.
- (viii) Missed Milestones - One or more Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) missed milestone.
- (ix) Environmental Permit Violations - Two or more permit violations in a 12 month period.
- (x) Control of Radioactive Contamination --
  - a) An event resulting in the loss of control of radioactive material to the public exceeding 20 times 10 CFR 835, Appendix E, values.
  - b) An event resulting in the estimated loss, damage and/or clean-up to property exceeding \$250,000.
  - c) One or more occurrences in any 12 month period resulting in the skin contamination of 5 or more individuals at a level exceeding the total contamination limits identified in 10 CFR 835, Appendix D.
  - d) A single event in which 5 or more individuals or 5 or more events in any 12 month period in which 1 or more individuals exceed confirmed internal depositions greater than 100 mRem.
  - e) Multiple radiological events at one or more facilities that in aggregate indicate a significant loss of radiological control.
- (xi) Control of Radiation Exposure --

- a) Radiation exposure to an individual exceeding 2.0 rem total effective dose equivalent in a year without prior DOE approval, or exposure to an individual exceeding any of the limits of 10 CFR 835.202, 835.206, 835.207, or 835.208.
  - b) Three or more individuals exceed confirmed internal depositions greater than 1.0 rem CEDE in any 12-month period.
- (xii) Transportation Safety – Two or more events, as defined by DOE M 231.1-2, Group 8, Criteria 1, 2 or 3 in any 12 month period.

**PART II - SECTION I**  
**CONTRACT CLAUSES**

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## PART II – SECTION I

### CONTRACT CLAUSES

**I-1    PREPRINTED CONTRACT CLAUSES FOR COST-REIMBURSEMENT  
SERVICE CONTRACTS (DOE SET 304) (FEB 1993)**

The contract clauses contained in DOE Set 304, Cost-Reimbursement Service contracts, dated Feb 1993 are located in this Section I and except for those indicated as deleted, are hereby incorporated into and made a part of this contract.

**I-2    52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR  
IMPROPER ACTIVITY (JAN 1997)**

- a.    The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- b.    The price or fee reduction referred to in paragraph (a) of this clause shall be-
  1.    For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award
  2.    For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee of "fee floor" specified in the contract;
  3.    For cost-plus-award-fee contracts-
    - i.    The base fee established in the contract at the time of contract award;
    - ii.   If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
  4.    For fixed-price-incentive contracts, the Government may –

- i. Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
  - ii. If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
- 5. For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- c. The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- d. In addition to the remedies in paragraph (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

**I-3    DEAR 952.204-2 SECURITY (OCT 1987)**

- a. Responsibility. It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in

the possession of the contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the Contracting Officer, the Contractor will complete a certificate of possession to be furnished to DOE specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the Contracting Officer, the security provisions of the contract will continue to be applicable to the matter retained. Special nuclear material will not be retained after the completion or termination of the contract.

- b. Regulations. The Contractor agrees to conform to all security regulations and requirements of DOE.
- c. Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- d. Definition of restricted data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- e. Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- f. Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- g. Definition of Special Nuclear Material (SNM). SNM means: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any

- material artificially enriched by any of the foregoing, but does not include source material.
- h. Security clearance of personnel. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
  - i. Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the Contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).
  - j. Subcontracts and purchase orders. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

**I-4     DEAR 952.204-70 CLASSIFICATION (APR 1984)**

In the performance of the work under this contract, the contractor shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and equipment originated or generated under the contract in accordance with classification regulations and guidance furnished to the contractor by the DOE. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or equipment shall include a provision to the effect that in the performance of such subcontract or purchase order, the subcontractor or supplier shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and equipment in accordance with classification regulations and guidance furnished to such subcontractor or supplier by the contractor.

**I-5     DEAR 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVERCONTRACTOR (APR 1984)**

- a. For purposes of this clause, a foreign interest is defined as any of the following:

1. A foreign government or foreign government agency;
  2. Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
  3. Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or
  4. Any person who is not a U.S. citizen.
- b. Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, special nuclear material as defined in 10 CFR Part 710, may result.
- c. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" shall mean DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- d. The Contractor shall immediately provide the Contracting Officer written notice of any changes in the extent and nature of FOCI over the contractor, which would affect the answers to the questions presented in DEAR 952.204-73. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.
- e. In those cases where a Contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Contracting Officer shall consider proposals made by the Contractor to avoid or mitigate foreign influences.
- f. If the Contracting Officer at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.

- g. The Contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the Contractor shall require such subcontractors to submit a completed certification required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer.
- h. Information submitted by the Contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- i. The requirements of this clause are in addition to the requirement that a Contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.
- j. The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the Contracting Officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the Contracting Officer's judgment, the Contractor creates an FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

**I-6 FAR 52.208-1 REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS (APR 1984)**

- a. This clause applies only if supplies furnished under this contract contain jewel bearings or related items.
- b. "Jewel bearing," as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes-olive, watch hole-straight, pallet stones, roller jewels (jewel pins),

end stones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this clause, means the Government- owned, Contractor operated William Langer Plant, Rolla, North Dakota 58367 (Phone: 701-477-3193).

"Price list," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

"Related item," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to a maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

- c. All jewel bearings and related items required for the supplies to be furnished under this contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.
  - 1. Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number shall be placed on it.
  - 2. Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.
  - 3. Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.
- d. At its option, the Plant may decline or reject all or part of a Contractor's or subcontractor's order. If the order is declined or rejected, the Contractor shall notify the contract administration office cognizant of this contract

promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Contractor indebtedness to the Plant as determined by the Plant, the contracting officer shall evaluate the impact and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.

- e. The Contractor agrees to insert this clause, including this paragraph (e), and the prime contract number in every subcontract unless the Contractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

**I-7     DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST-  
SPECIAL CLAUSE (NOV 1987)**

- a. Purpose. The primary purpose of this clause is to aid in ensuring that the Contractor (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- b. Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.
  - 1. Technical consulting and management support services.
    - i. The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the Contractor's performance of work under this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for technical consulting and management support services.

- ii. If the Contractor under this contract prepares a complete or essentially complete statement of work or specifications to be used in competitive procurements, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.
  - iii. Nothing in this paragraph shall preclude the Contractor from offering or selling its standard commercial items to the Government.
2. Access to and use of information.
- i. If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the contracting officer it shall not: (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the Department.
  - ii. In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such

information in accordance with any restrictions imposed on such information.

- iii. The Contractor shall have, subject to patent, data, and security clauses of this contract, the right to use technical data it first produces under this contract for its private purpose consistent with the Rights in Data provisions of this contract.

c. Disclosure after award.

- 1. The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract, an immediate and full disclosure shall be made in writing to the contracting officer which shall include a description of the action which the Contractor has taken or proposes to take to avoid or mitigate such conflicts. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interests of the Government.
- 2. In the event that the Contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the Contracting Officer, the Department may terminate the contract for default.

d. Subcontracts.

- 1. The Contractor shall include this Clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms; "contract", "Contractor" and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.
- 2. If a subcontract is to be issued for evaluation services or activities, technical consulting or management support services work as defined at DEAR 909.570, the Contractor shall obtain for the Department a disclosure statement or representation, in accordance with DOE regulations in effect at the time, from each intended subcontractor or consultant. The Contractor shall not enter into any subcontract nor engage any consultant unless the Contracting Officer shall have first notified the Contractor that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of the Government.

- e. Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Government may terminate the contract for default, disqualify the Contractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.
- f. Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer shall grant such a waiver in writing.
- g. Modifications. Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, the Department will request and the Contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

**I-8     DEAR 952-212.73 COST AND SCHEDULE CONTROL SYSTEMS (SEP 1991)**

- a. In the performance of this contract, the Contractor shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in the contract and as described in detail in "Cost and Schedule Control Systems Criteria for Contract Performance Measurement- Implementation Guide," annexed hereto and hereinafter referred to as the "Guide." Prior to acceptance by the contracting officer and within TBD calendar days after contract award, the Contractor shall be prepared to demonstrate systems operation to the Government to verify that the proposed systems meet the designated criteria. As a part of the review procedures, the Contractor shall furnish the Government a description of the cost and schedule control systems applicable to this contract in such form and detail as indicated by the Guide, or as required by the contracting officer. The Contractor agrees to provide access to all pertinent records, data, and plans as requested by representatives of the Government for the conduct of systems review.
- b. The description of the management control systems accepted by the contracting officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the Contractor in the performance of this contract.

- c. Contractor changes to the reviewed systems shall be submitted for review and approval as required by the Contracting Officer. When contracting officer approval is required, the contracting officer shall advise the Contractor of the acceptability of such changes within sixty (60) days after receipt from the Contractor. When systems existing at the time of contract award do not comply with the designated criteria, adjustments necessary to assure compliance will be made at no change in contract price or fee.
- d. The Contractor agrees to provide access to all pertinent records and data requested by the contracting officer, or duly authorized representative, for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the contracting officer.
- e. The Contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the Contractor and as set forth in the schedule of this contract, meet the criteria for cost and schedule control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime Contractor, or by the Government when requested by either the prime or subcontractor.

**I-9 ORDER OF PRECEDENCE**

This clause moved (unchanged) to Section H (H-34).

**I-10 FAR 52.215-39 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS OTHER THAN PENSIONS (PRB) (JUL 1991)**

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If the PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(5). The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804-8(f). The resulting adjustment to prior years' PRB costs will be determined and applied in accordance with FAR 31.205-6(o).

**I-11 DEAR 952.216-7 ALLOWABLE COST AND PAYMENT DEVIATION (APR 1984) AND ALTERNATE II**

- a. Invoicing. (Deviation) The Government shall make payments to the Contractor within thirty days of receipt of the invoice/voucher, in amounts

determined to be allowable by the Contracting Officer in accordance with the clause entitled "Insurance" and Subpart 31 of the Federal Acquisition Regulation (FAR) as supplemented by Subpart 931 of the Department of Energy Acquisition Regulation (DEAR), in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

- b. Reimbursing costs. (Deviation)
  - 1. For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only –
    - i. Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
    - ii. When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for –
      - A. Materials issued from the Contractor's inventory and placed in the production process for use on the contract;
      - B. Direct labor;
      - C. Direct travel;
      - D. Other direct in- house costs; and
      - E. Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and
    - iii. The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

iv. (Deviation) Environmental Costs.

- A. Environmental costs are those costs incurred by the Contractor for the primary purpose of preventing pollution; properly handling, transporting, treating, storing, or disposing of wastes or other materials generated by operations or activities under the Contract; complying with federal, state, or local environmental laws and regulations; and correcting past environmental damage caused by the activity or inactivity of this Contractor under this contract.
- B. Environmental costs that are determined reasonable and allocable under Subpart 31.2 of the FAR and that are generated by current operations or activities under this contract, except those resulting from violation of law or regulation, are allowable.
- C. Environmental costs incurred under this contract by the Contractor to remedy damage caused by the Contractor's past activities or inactivity, or for which it has been administratively or judicially determined to be liable (including where a settlement or consent decree has been issued) are presumed to be unallowable if DOE was not responsible for such damage. For such costs to be considered allowable, they must be determined reasonable and allocable in accordance with FAR 31 and the Contractor must demonstrate to the Contracting Officer that it:
  - 1. Was performing the contract at the time the conditions requiring clean-up were created and performance of this contract contributed to the creation of the conditions requiring clean-up;
  - 2. Was conducting its activities or operations prudently at the time the conditions requiring clean-up were created, in accordance with then-accepted standard industry practices for environmental hazard prevention, and in compliance with all then-existing environmental laws, permits, compliance agreements and regulations;

3. Acted promptly and reasonably to prevent and minimize the damage and costs associated with remedying the damage; and
    4. Demonstrates that it has exhausted or is diligently pursuing all available legal and contributory (e.g., insurance or indemnification) sources to defray the clean-up costs. If the Contractor subsequently obtains funds as a result of legal action or other contributory source, it shall refund or credit the Government in accordance with FAR 31.201-5.
  2. Contractor contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.
  3. Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.
  4. Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost reimbursement under this clause.
- c. Small business concerns. A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.
- d. Final indirect cost rates. (DEVIATION)

1. Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
  2. The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data. These rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
  3. The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agree- upon final annual indirect cost rates, (ii) the basis to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.
  4. Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
- e. Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates--
1. Shall be the anticipated final rates; and
  2. May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

- f. Quick-closeout procedures. When the Contractor and Contracting Officer agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.
- g. Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- h. Final payment.
  - 1. The Contractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
  - 2. The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—
    - i. An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and
    - ii. A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

- A. Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
- B. Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues; and provided that the costs associated with such claims are not unallowable. In addition, the Contractor should provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not.
- C. Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

**I-12 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT**  
**(MAR 1989)**

- a. The Government may extend the term of this contract by written notice to the Contractor within the period of performance stated within this contract; provided that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- b. If the Government exercises this option, the extended contract shall be considered to include this option provision.
- c. The total duration of this contract, including the exercise of any options under this clause, shall not exceed nine and one half (9½) years.

**I-13. DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)**

- a. Notwithstanding any other provision of the contract, the prior approval of the contracting officer shall be obtained when, in performance of this contract, the contractor acquires or proposes to acquire use of real property by:
  - 1. Purchase, on the Government's behalf or in the contractor's own name, with title eventually vesting in the Government.
  - 2. Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
  - 3. Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- b. Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.
- c. The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

**I-14 FAR 52.220-4 LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (APR1984)**

- a. See the Utilization of Labor Surplus Area Concerns clause of this contract for applicable definitions.
- b. The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the contract at prices no higher than obtainable elsewhere. The Contractor shall-
  - 1. Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns clause, and (iii) administer the Contractor's labor surplus area subcontracting program;

2. Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;
  3. Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;
  4. Include the Utilization of Labor Surplus Area Concerns clause in subcontracts that offer substantial LSA subcontracting opportunities; and
  5. Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this clause. The records will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulations.
- c. The Contractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (c), and to notify the contracting officer of the names of subcontractors.

**I-15 DEAR 970.5204-2 INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION (JUNE 1997)**

- a. For the purposes of this clause,
  1. Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
  2. Employees include subcontractor employees.
- b. In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:

1. Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees managing or supervising employees performing work.
  2. Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  3. Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  4. Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  5. Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  6. Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  7. The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- c. The Contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Contractor will:
1. Define the scope of work;

2. Identify and analyze hazards associated with the work;
  3. Develop and implement hazard controls;
  4. Perform work within controls; and
  5. Provide feedback on adequacy of controls and continue to improve safety management.
- d. The System shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Contractor will measure system effectiveness.
- e. The Contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- f. The Contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- g. The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the Contractor to a subcontractor in accordance with paragraph (I) of this

clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

- h. The Contractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.
- i. The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or - leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may require that the subcontractor submit a Safety Management System for the Contractor's review and approval.

**I-16 DEAR 970.5204-78 LAWS, REGULATIONS, AND DOE DIRECTIVES**  
**(JUNE 1997)**

- a. In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the Contractor to comply with such law or regulation pursuant to this paragraph.
- b. In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (c) of this Clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise List B and provide the Contractor with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in

writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the Contractor not later than 30 days prior to the effective date of the revision of List B. The Contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the Clause entitled, Changes, of this contract.

- c. Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under 48 CFR (DEAR) 970.5204-2. When such a process is used, the set of tailored ES&H requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.
- d. The Contractor is responsible for compliance with the requirements made applicable to this contract, regardless of the performer of the work. The Contractor is responsible for flowing down the necessary provisions to subcontracts at any tier to which the Contractor determines such requirements apply.

#### **I-17 PERMITS AND LICENSES**

This clause moved (unchanged) to Section H (H-33).

#### **I-18 DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)**

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the Contractor until disposal is authorized by DOE or at the option of the Contractor delivered to DOE upon completion or termination of the contract. If the Contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

**I-19 FAR 52.224-2 PRIVACY ACT (DEVIATION) (APR 1984)**

- a. The Contractor agrees to-
  - 1. Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies-
    - i. The systems of records; and
    - ii. The design, development, or operation work that the Contractor is to perform;
  - 2. Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and
  - 3. Include this clause, including this subparagraph 3, in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.
- b. In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.
- c.
  - 1. "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
  - 2. "Record," as used in this clause, means any item, collection, or grouping of information about an individual

that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

3. "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**I-20 FAR 52.225-3 BUY AMERICAN ACT--SUPPLIES (JAN 1989)**

- a. The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above \$25,000 in value, components of Canadian origin are treated as domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

- b. The Contractor shall deliver only domestic end products, except those--
  1. For use outside the United States;
  2. That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
  3. For which the agency determines that domestic preference would be inconsistent with the public interest: or;

4. For which the agency determines the cost to be unreasonable (see section 25.105 of the Federal Acquisition Regulation).

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the Federal Acquisition Regulation.)

**I-21 FAR 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (APR 1991)**

- a. "Parastatal organization," as used in this clause, means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa. It does not include a corporation, partnership, or entity which previously received start up assistance from the South African Industrial Development Corporation but which is now privately owned and which is not owned, controlled, or subsidized by the Government of South Africa.
- b. Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract—
  1. Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;
  2. Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba;
  3. Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles; or
  4. Supplies or services from the South African Government or parastatal organizations of South Africa.
- c. The Contractor shall not acquire for use in the performance of this contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.
- d. The Contractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder.

**I-22 FAR 52.230-2 COST ACCOUNTING STANDARDS (AUG 1992)**

- a. Unless the contract is exempt under 48 CFR, Subparts 9903.201-2 and 9903.201-2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—
  1. (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR, Subpart 9903.202-1 through 9903.205-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
  2. Follow consistently the Contractor's accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.
  3. Comply with all CAS, including any modifications and interpretations indicated thereto-contained in 48 CFR, Part 9904 (Appendix B, FAR loose- leaf edition), in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
  4. i. Agree to an equitable adjustment as provided in the

Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

- ii. Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
  - iii. When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
5. Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.
- b. If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR part 9904 or a CAS rule or regulation in 48 CFR part 9903 and as to any cost adjustment demanded by the United State, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
  - c. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

- d. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on-
  1. Establishing catalog or market prices of commercial items sold in substantial quantities to the general public; or
  2. Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1.

**I-23 FAR 52.230-4 CONSISTENCY IN COST ACCOUNTING PRACTICES (AUG 1992)**

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB DS-1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defense shall be available for inspection and use by authorized representatives of the United States Government.

**I-24 FAR 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)**

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided that this limitation shall not apply to-

- a. Withholdings pursuant to any clause relating to wages or hours of employees;

- b. Withholdings not specifically provided for by this contract;
- c. The recovery of overpayments; and
- d. Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

**I-25 FAR 52.232-25 PROMPT PAYMENT (SEP 1992)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified. The term foreign vendor means an incorporated concern not incorporated in the United States, or an unincorporated concern having its principal place of business outside the United States.

a. Invoice Payments

- 1. For purposes of this clause, "invoice payment" means a Government disbursement of monies to a Contractor under a contract or other authorization for supplies or services accepted by the Government. This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the Contractor.
- 2. Except as indicated in subparagraph (a)(3) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:
  - i. The 30th day after the designated billing office has received a proper invoice from the Contractor.
  - ii. The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30<sup>th</sup> day after the date the Contractor's invoice is dated,

provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

3. The due date on contracts for meat, meat food products, or fish; contracts for perishable agricultural commodities, contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils, and contracts not requiring submission of an invoice shall be as follows:
  - i. The due date for meat and meat food products, as defined in section 2(a) (3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182 (3)) and further defined in Pub. L. 98-181 to include any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, will be as close as possible to, but not later than, the 7th day after product delivery.
  - ii. The due date for fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Act of 1986 (16 U.S.C. 4003(3)), will be as close as possible to, but not later than, the seventh day after product delivery.
  - iii. The due date for perishable agricultural commodities, as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(44)), will be as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.
  - iv. The due date for dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, will be as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received.
  - v. If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.
4. An invoice is the Contractor's bill or written request for payment under the contract for supplies delivered or services performed. An invoice shall be prepared and submitted to the designated billing officer specified in the contract. A proper invoice must include the

items listed in subdivisions (a)(4)(i) through (a)(4)(viii) of this clause. If the invoice does not comply with these requirements, then the contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(6) of this clause.

- i. Name and address of the Contractor.
  - ii. Invoice date.
  - iii. Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
  - iv. Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
  - v. Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
  - vi. Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
  - vii. Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice.
  - viii. Any other information or documentation required by other requirements of the contract (such as evidence of shipment).
5. An interest penalty shall be paid automatically by the Government, without request from the contractor, if payment is not made by the due date and the conditions listed in subdivisions (a) (5) (i) through (a) (5) (iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

- i. A proper invoice was received by the designated billing office.
  - ii. A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or contractor compliance with any contract term or condition.
  - iii. In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.
6. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other government authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(4) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.
- i. For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract provision. In the

event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

- ii. The following periods of time will not be included in the determination of an interest penalty:
    - A. The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, dairy products, edible fat or oils, and food products prepared from edible fats or oils).
    - B. The period between the defects notice and resubmission of the corrected invoice by the Contractor.
  - iii. Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.
  - iv. Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.
7. An interest penalty shall also be paid automatically by the designated payment office, without request from the contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a) (6) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

8. If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the contractor --
  - i. Is owed an interest penalty;
  - ii. Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and
  - iii. Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.
- b. Contract Financing Payments
  1. For purposes of this clause, contract financing payment means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost type contracts.
  2. For contracts that provide for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.
  3. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

4. Contract financing payments shall not be assessed an interest penalty for payment delays.
- c. If this contract contains the clause at 5.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

**I-26 FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

**I-27 FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

- a. The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to (1) furnish phase- in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- b. The Contractor shall, upon the contracting officer's written notice, (1) furnish phase- in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase- in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the contracting officer's approval. The Contractor shall provide sufficient experienced personnel during the phase- in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- c. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

- d. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

**I-28 FAR 52.242-13 BANKRUPTCY (APR 1991)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

**I-29 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (NOV 1991)**

- a. Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- b. Definitions. The definitions set out in the Act shall apply to this clause.
- c. Financial protection. Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.
- d. 1. Indemnification. To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such

legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

2. The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of, or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- e. 1. Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
2. In the event of an extraordinary nuclear occurrence which:
    - i. Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
    - ii. Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
    - iii. Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
    - iv. Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:
      - A. Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;
  2. Contributory negligence;
  3. Assumption of risk; or
  4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
- B. Any issue or defense as to charitable or governmental immunity; and
- C. Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have know, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
- v. The term "extraordinary nuclear occurrence" means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
- vi. For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.
3. The waivers set forth above:

- i. Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the clause of action;
  - ii. Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
  - iii. Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
  - iv. Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
  - v. Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
  - vi. Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
  - vii. Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
  - viii. Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- f. Notification and litigation of claims. The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE be required to indemnify hereunder; and

(2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder; take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

- g. Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- h. Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to any, other clause of this contract, including the clause entitled Contract Disputes provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, Officials Not to Benefit, and Examination of Records by the Comptroller General, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- i. Civil penalties. The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- j. Criminal penalties. Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- k. Inclusion in subcontracts. The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as the term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

1. To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply.

**I-30 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)**

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

**I-31 FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)**

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

**I-32 FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)**

- a. Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- b. Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

- c. If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

**I-33 INSURANCE**

This clause moved (unchanged) to Section H (H-35).

**I-34 PROCUREMENT OF CONSTRUCTION (JUN 1991)**

This clause moved (unchanged) to Section H (H-36).

**I-35 PROCUREMENT OF ARCHITECT-ENGINEERING SERVICES**

This clause moved (unchanged) to Section H (H-37).

**I-36 WORKER'S COMPENSATION**

This clause modified and moved to Section H (H-32).

**I-37 DEAR 970.5204-11 CHANGES (DEVIATION) (APR 1984)**

- a.
  - 1. If, as a result of any instruction or direction given by DOE pursuant to the provisions of this contract, the level of the Contractor's effort under this contract is materially increased or decreased, the fee provided for in the clause entitled "Payment of Basic Fee and Award Fee" may or may not be adjusted. In the event either party deems that an adjustment in fee is appropriate, it will, within thirty (30) days after issuance of the instruction or direction, so notify the other party in writing and the parties will attempt to agree upon the amount by which the fee should be increased or decreased. Failure of the parties so to agree shall constitute a dispute within the meaning of the article entitled "Disputes."
  - 2. Services pursuant to mutual agreement (Related Services) under the provisions of this contract shall be performed without additional fee unless DOE and the Contractor shall mutually agree in writing that they will constitute a material increase in the level of the Contractor's effort under this contract, in which event the parties hereto will negotiate in good faith to agree upon an equitable fee for such additional services. Failure of the parties so to agree shall constitute a dispute within the meaning of the clause entitled "Disputes."

- b. Work to continue. Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

**I-38    DEAR 970.5204-12 CONTRACTOR'S ORGANIZATION (DEVIATION)**  
**(APR 1984)**

- a. Organization chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.
- b. Supervisory representative of Contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site at all times. This also applies to off-site work.
- c. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The Contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in 970.2272, and such standards and procedures shall be subject to the approval of the Contracting Officer. If the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be contrary to the public interest, the Government reserves the right to require the Contractor to remove the employee.

**I-39    DEAR 970.5204-23 TAXES (APR 1984)**

- a. The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid;\* and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not

be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

\*Requirement for notice may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.

- b. The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as maybe required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.
- c. The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

**I-40    DEAR 970.5204-26 NUCLEAR SAFETY (APR 1984)**

- a. The activities under this contract include the operation of nuclear facilities. The Contractor recognizes that such operations involves the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the Contractor will exercise a degree of care commensurate with the risk involved.
- b. The Contractor shall comply with all applicable regulations of DOE concerning nuclear safety and with those requirements (including reporting requirements and instructions) of DOE concerning nuclear safety of which it is notified in writing by the contracting officer.

- c. Prior to the initial startup of any nuclear facility under this contract and prior to any subsequent startup following a change which represents a significant deviation from the procedures, equipment, or analyses described in the safety analysis reports or other hazards summary reports for that facility, the Contractor shall:
  - 1. Prepare a safety analysis report and detailed plans and procedures designed to assure the safe operations and maintenance of the facility in accordance with applicable DOE regulations and directives. For nuclear reactors and critical facilities, technical specifications shall also be provided.
  - 2. Establish nuclear safety control procedures to be used within the Contractor's organization to insure competent independent review and internal approval of the safety analysis report and the detailed plans and procedures specified in (1) above.
  - 3. Submit to the contracting officer for his approval such procedures relating to nuclear safety as may be designated by him.
  - 4. Carry out a program of initial training and periodic requalification designed to assure that all personnel who will be engaged in nuclear operations or maintenance understand the approved plans and procedures for nuclear safety and are qualified to perform their assigned functions; and
  - 5. Obtain the approval of the contracting officer prior to start-up of the facility.
- d. In the operation and maintenance of any nuclear facility under this contract, the Contractor shall:
  - 1. Use all reasonable efforts to assure that all operational and maintenance activities are performed by qualified and adequately trained personnel, and except as otherwise agreed in writing, are conducted under the supervision of personnel who are qualified and authorized to evaluate any emergency condition and take prompt effective action with respect thereto.
  - 2. Operate the facility within the technical specifications or operational safety requirements which are approved by the contracting officer.
  - 3. Follow strictly the procedures relating to nuclear safety approved by the contracting officer in (c)(3) above, and submit to the

contracting officer for his approval, any proposed changes in such procedures.

4. Establish an auditable, well-defined, internal safety review and inspection system approved by the contracting officer (including review and inspection reports by competent technical personnel) that will: (i) Provide frequent and periodic checks of facility performance and of the qualifications and training of operating and maintenance personnel, and (ii) provide for investigation of any unusual or unpredicted conditions that might affect safe operations.
5. Report promptly to the contracting officer any change in the physical condition of the facility or its operating characteristics that might, in the judgment of the Contractor, affect the safe operation of the facility.
6. Terminate operations at the facility immediately whenever so instructed by the contracting officer, or whenever, in the judgment of the Contractor, the risk of a nuclear incident endangering persons or property warrants such action.
7. Prepare, in cooperation with other services and facilities available at the site and with the approval of the Contracting Officer, a plan for minimizing the effects of a nuclear incident upon the health and safety of all persons on the site; participate as directed in the integration of the Contractor's and contracting officer's emergency plans with the responsible state and local government's emergency plans for protection of the public offsite; instruct its personnel as to their participation in such plans and any personal risk to such personnel that may be involved; and participate in such practice exercises as may be desirable to assure the effectiveness of such plans.
8. At an appropriate time as determined by the Contracting Officer, prepare and submit to the Contracting Officer for his approval, shutdown, decommissioning, decontamination and property management plans leading to orderly and safe program disposition of the nuclear facility and any associated nuclear wastes or other hazardous material.
9. In the event that the Contractor fails to comply with said standards and requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter a start order for resumption of the work may be issued at the discretion of the

contracting officer. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

**I-41    DEAR 970.5204-28 ASSIGNMENT (APR 1984)**

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Contracting Officer.

**I-42    DEAR 970.5204-43 OTHER GOVERNMENT CONTRACTORS (APR 1984)**

The Government may undertake or award contracts for work or services. The Contractor agrees to fully cooperate with such other Contractors and Government employees and carefully fit its own work to such other work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Government employees.

**I-43    DEAR 970.5204-45 TERMINATION (DEVIATION) (APR 1991)**

- a. This contract shall continue until the date shown in the clause of this contract entitled "Term of Contract(s)" unless sooner terminated in accordance with the provisions which follow:
  1. The performance of work under this contract may be terminated by the Government in whole, or from time to time in part, (i) whenever the Contractor shall default in performance, and shall fail to cure the fault or failure within such period as the Contracting Officer may allow after receipt from the Contracting Officer of a notice specifying the fault or failure, or (ii) whenever, for any reason, the Contracting Officer shall determine any such termination is for the best interest of the Government. Termination of the work hereunder shall be effected by delivery of a notice of termination specifying whether termination is for default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either party may have against the other. If, after notice of termination under the provisions of (a)(1)(i) above, it is determined for any reason that the Contractor was not in default, such notice of default shall be deemed to have been issued pursuant to (a)(1)(ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

2. Upon receipt of notice of termination, in accordance with (1) above, the Contractor shall, to the extent directed in writing by the Contracting Officer, discontinue the terminated work and the placing of orders for materials, facilities, supplies, and services in connection therewith, and shall proceed, if, and to the extent required by the Contracting Officer, to cancel promptly and settle with the approval of the Contracting Officer, existing orders, subcontracts, and commitments insofar as such orders, subcontracts, and commitments pertain to this contract.
- b. Upon the termination of this contract, full and complete settlement of all claims of the Contractor and of DOE arising out of this contract shall be made as follows:
1. The Government shall have the right in its discretion to assume sole responsibility for any or all obligations, commitments, and claims that the Contractor may have undertaken or incurred, the cost of which is allowable in accordance with the provisions of this contract; and the Contractor shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and; take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government any rights and benefits the Contractor may have under or in connection with such obligations, commitments, or claims.
  2. The Government shall treat as allowable costs all expenditures made in accordance with and allowable under the clause entitled "Allowable Cost and Payment," not previously so allowed or otherwise credited for work performed prior to the effective date of termination, together with expenditures as may be incurred for a reasonable time thereafter with the approval of, or as directed by, the Contracting Officer.
  3. The Government shall treat as allowable costs, to the extent not included in (b)(2) above, the costs of settling and paying claims arising out of the termination of work under orders, subcontracts, and commitments as provided in (a)(2) above.
  4. The Government shall treat as allowable costs the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the termination of the contract and for the termination and settlement of orders and subcontracts thereunder, together with such further expenditures

made by the Contractor after the date of termination for the protection or disposition of Government property as are approved or required by the Contracting Officer, provided, however, that if the termination is for default of the Contractor, there shall not be included any amount for preparation of the Contractor's settlement proposal.

5. If the performance of work under this contract is terminated in whole by the Government, the basic and performance based fee of the Contractor shall be prorated to and including the effective date of such termination. In addition, if the termination is for the convenience of the Government, the Contractor shall be paid a fixed fee in an amount to be agreed upon as compensation for its services in closing out the work under this contract after the effective date of such termination. The additional fixed fee is to be negotiated as soon as practicable after service of notice of termination, shall take into account the estimate of the cost of the services and managerial effort to be rendered under this clause after the effective date of termination, and shall be provided for in a supplement or amendment to this contract prior to final settlement hereunder. Pending agreement as to the amount of such fee, the Contractor shall diligently proceed with the performance of the services required under this clause. No additional fee will be paid if the contract is terminated due to the default of the Contractor. In the event of a partial termination by the Government, an equitable adjustment shall be made in the fee if such termination results in a material decrease in the level of the Contractor's management effort. Any failure to agree on the right to or the amount of any adjustment shall be deemed a dispute within the purview of the clause hereof entitled "Disputes."
  6. The obligation of the Government to make any of the payments required by this clause or any other provisions of this contract shall be subject to any unsettled claims in connection with this contract which the Government may have against the Contractor.
- c. Prior to final settlement, the Contractor shall furnish a release as required in the clause entitled "Allowable Cost and Payment" and account for Government-owned property as may be required by the Contracting Officer: provided, however, that unless the Contracting Officer requires an inventory, the maintenance and disposition of the records of Government-owned property in accordance with the clause entitled "Government Property-Cost Reimbursement, Time-and-Material, or Labor Hour Contract" shall be accepted by the Contracting Officer as full compliance

with all requirements of this contract pertaining to an accounting for such property.

**I-44 FAR 52.227-1 AUTHORIZATION AND CONSENT (APR 1984)**

- a. The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent.
  - 1. Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or
  - 2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with
    - i. Specifications or written provisions forming a part of this contract or
    - ii. Specific written instructions given by the Contracting Officer directing the manner of performance.

The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

- b. The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$25,000); however, omission of this clause from any subcontract, under or over \$25,000, does not affect this authorization and consent.

**I-45 FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (APR 1984)**

- a. The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

- b. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit of claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- c. The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

**I-46    DEAR 952.227-9 REFUND OF ROYALTIES (FEB 1995)**

- a. The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.
- b. The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract here- under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.
- c. The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.
- d. The Contractor will be compensated for royalties reported under paragraph c. of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the government and

allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

- e. If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph d. of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.
- f. The substance of this clause, including this paragraph f., shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

**I-47    DEAR 952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (FEB 1995)**

- a. Definitions.

"Invention", as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Practical application", as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention", as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

"Patent Counsel", as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

"DOE patent waiver regulations", as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109-6 or successor regulations.

"Agency licensing regulations" and "applicable agency licensing regulations", as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

- b. Allocations of principal rights.
  - 1. Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph b.2. and paragraph d. of this clause.
  - 2. Greater rights determinations.
    - i. The Contractor, or an employee- inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph d. of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee- inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph e.2. of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph c. of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.
    - ii. Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English- language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

- iii. Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.
  - iv. Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.
- c. Minimum rights acquired by the Government.
- 1. With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:
    - i. The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).
    - ii. The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that –
      - A. Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
      - B. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
      - C. Such action is necessary to meet requirements for public use specified by Federal regulations and such

requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

- D. Such action is necessary because the agreement required by paragraph i. of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- iii. The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march- in proceedings undertaken by that agency in accordance with subparagraph c.1.ii. of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.
- iv. The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.
- v. The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph c.1.i. of this clause in any instrument transferring rights in a subject invention and to provide for the gathering of licenses as required by subparagraph c.1.ii. of this clause, and for the

reporting of utilization information as required by subparagraph c.1.iii. of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

2. Nothing contained in this paragraph c. shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.
- d. Minimum rights to the Contractor.
1. The Contractor is hereby granted a revocable, nonexclusive, royalty- free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the time specified in subparagraph e.2. of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
  2. The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
  3. Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to

appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of its license.

4. The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs d.4.i. through d.4.vii. of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph e.2. of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.
  - i. The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:
    - A. The commercial use that is being made, or is intended to be made, of said invention, and
    - B. The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.
  - ii. The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.
  - iii. If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph b.2. of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to

sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

- iv. Subject to the rights granted in subparagraphs d.1., 2., and 3. of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph d.4. in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.
- v. Subject to the rights granted in subparagraphs d.1., 2., and 3. of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph d.4., to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:
  - A. If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or
  - B. Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

- vi. If the Contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.
  - vii. Subject to the license specified in subparagraphs d.1., 2., and 3. of this clause, the Contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.
- e. Invention identified, disclosures, and reports.
- 1. The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.
  - 2. The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Office within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6

months after the Contractor becomes aware that subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph b.2. of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

3. The Contractor shall furnish the Contracting Officer the following:
  - i. Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph e.1. of this clause have been followed.
  - ii. A final report, within 3 months after completion of the contracted work listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.
4. The Contractor agrees to require by written agreement, its employees, other than clerical and nontechnical employees to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in

order that the Contractor can comply with the disclosure provisions of paragraph c. of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph e.2. of this clause.

5. The Contractor agrees subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.
- f. Examination of records relating to inventions.
1. The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—
    - i. Any such inventions are subject inventions;
    - ii. The Contractor has established and maintains the procedures required by subparagraphs e.1. and 4. of this clause;
    - iii. The Contractor and its inventors have complied with the procedures.
  2. If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.
  3. Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.
- g. Withholding of payment (NOTE: This paragraph does not apply to subcontracts).
1. Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this

contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

- i. Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.
  - ii. Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph e.1. of this clause;
  - iii. Disclose any subject invention pursuant to subparagraph e.2. of this clause;
  - iv. Deliver acceptable interim reports pursuant to subparagraph e.3.i. of this clause; or
  - v. Provide the information regarding subcontracts pursuant to subparagraph h.4. of this clause.
2. Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
  3. Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph e.2. of this clause, and acceptable final report pursuant to subparagraph e.3.ii. of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.
  4. The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.
- h. Subcontracts.
1. The Contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or

domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Contractor shall include this clause (suitably modified to identify the parties). The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

2. In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—
  - i. Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
  - ii. Shall not proceed with such subcontract without the written authorization of the Contracting Officer.
3. In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.
4. The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.
5. The Contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the Contracting Officer, promptly upon identification of the inventions.
  - i. Preference United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the

requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. Atomic energy.

1. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
2. Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph e.1. of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

k. Background Patents.

1. Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:
  - i. Which the Contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and
  - ii. Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.
2. The Contractor agrees to and does hereby grant to the Government a royalty- free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

3. The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.
4. Notwithstanding subparagraph k.3. of this clause, the Contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:
  - i. A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or
  - ii. The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.
- l. Publication. It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.
- m. Forfeiture of rights in unreported subject inventions.
  1. The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:
    - i. Files or causes to be filed a United States or foreign patent application thereon; or

- ii. Submits the final report required by subparagraph e.2.ii. of this clause, whichever is later.
- 2. However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph m.1. of this clause, the Contractor:
  - i. Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or
  - ii. Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or
  - iii. Establishes that the failure to disclose did not result from the Contractor's fault or negligence.
- 3. Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph m. shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

**I-48 DOE PR 9-9.103-3 INTELLECTUAL PROPERTY INDEMNITY (JUN 1979)**

- a. The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of U.S. Letters Patent (except U.S. Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) resulting from the Contractor's:
  - 1. Furnishing or supplying standard parts or components which have been sold or offered for sale to public on the commercial open market; or

2. Utilizing its normal practices or methods which normally are or have been used in providing goods and services in the commercial open market, in the performance of the contract; or
  3. Utilizing any parts, components, practices, or methods to the extent to which the Contractor has secured indemnification from liability. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction or to an infringement resulting from addition to or change in such supplies or components furnished or construction work performed for which addition or change was made subsequent to delivery or performance by the Contractor.
- b. The Contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses for violation by the Contractor of proprietary rights or copyrights arising out of delivery or use of any data furnished or utilized by the Contractor in the course of or under this contract.

**I-49    DOE PR 9-9.106 CLASSIFIED INVENTIONS (JUN 1979)**

- a. The Contractor shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this contract, in any country other than the United States, an application or registration for a patent without first obtaining written approval of the contracting officer.
- b. When filing a patent application in the United States on any invention or discovery conceived or first actually reduced to practice in the course of or under this contract, the subject matter of which is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Contractor shall by separate letter identify by agency and number, the contract or contracts which require security classification markings to be placed on the application.

- c. The substance of this clause shall be included in subcontracts which cover or are likely to cover classified subject matter.

**I-50 DOE PR 9-9.107-5(H) FACILITIES LICENSE\* (DEVIATION) (APR 1984)**

Facilities license.

As used in this (n) paragraph "facility" means any facility of the Government at which the remediation, decontamination or decommissioning technology practiced under this contract or any subcontract thereunder may be utilized by or for the Government.

- a. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor, which are owned or controlled by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured by the facility (1) to practice or to have practices by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.
- b. To the extent that the Contractor or any of its subcontractors intend to employ or utilize patented technology which it does not own or control and which it knows or should know is patented to others, the Contractor shall be responsible for obtaining a license to utilize such patented technology by and for the Government on terms and conditions which have the written approval of the Contracting Officer.

\*This clause supplements DEAR 952.227-13 Patent Rights - Acquisition by the Government (FEB 1995).

**I-51 DEAR 970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999)**

- a. The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

- b. The contractor shall insert or have inserted the substance of this clause, including this paragraph b, in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

**I-52 FAR52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 180 to 30 days prior to the expiration date of the contract.

**I-53 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES—FACILITY MANAGEMENT CONTRACTS (JAN 2004) and ALTERNATE I (JAN 2004) and ALTERNATE II (JAN 2004)**

(a) General.

- (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon the contractor's or contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS).
- (2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.
- (3) If the contractor does not meet the performance requirements of this contract relating to ES&H during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount.

- (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraph (c) of this clause.
- (2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.
- (3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the contractor's overall performance in meeting the ES&H requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include the following.
  - (i) Degree of control the contractor had over the event or incident.
  - (ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.
  - (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
  - (iv) General status (trend and absolute performance) of ES&H and compliance in related areas.
  - (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status, or ISO 14000 Certification).

- (vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).
  - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).
  - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (c) Environment, Safety and Health (ES&H). Performance failures occur if the contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:
- (1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.
    - (i) Type A accident (defined in DOE Order 225.1A).
    - (ii) Two Second Degree performance failures during an evaluation period.
  - (2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:
    - (i) Type B accident (defined in DOE Order 225.1A).

- (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
  - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.
- (3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:
  - (i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 232.1A requirements; or internal oversight of DOE Order 440.1A requirements.
  - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.
  - (iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.
  - (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.
- (d) Minimum requirements for specified level of performance.
  - (1) At a minimum the contractor must perform the following:
    - (i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

- (ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and
    - (iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.
  - (2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.
- (e) Minimum requirements for cost performance.
- (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
  - (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
  - (3) The contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

**I-54    DEAR 952.231-71    INSURANCE – LITIGATION AND CLAIMS**  
**(APR 2002)**

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (c)
  - (1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.
  - (2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
  - (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.
- (d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to

the extent determined by the contracting officer.

- (e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed-
  - (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
  - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled "Obligation of Funds."
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-
  - (1) Which are otherwise unallowable by law or the provisions of this contract; or
  - (2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.
- (h) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's-
  - (1) Willful misconduct,

- (2) Lack of good faith, or
  - (3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
- (i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.
- (j) (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.
- (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.
- (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.
- (4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245-1.
- (k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-

- (1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
- (2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
- (3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.